

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department on its own motion as to)	D.T.E. 98-57
The propriety of the rates and charges set forth in the)	Phase IV
following tariff: M.D.T.E. No. 17, filed with the)	
Department on October 5, 2000, by Verizon New)	
England, Inc., d/b/a Verizon Massachusetts.)	
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**JOINT PETITION FOR APPROVAL
OF SETTLEMENT AGREEMENT**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon”), Sprint Communications Company, L.P. (“Sprint”), and Covad Communications Company (“Covad”), (collectively referred to as “Joint Petitioners”) respectfully submit this Joint Petition for Approval of Settlement Agreement. The attached Settlement Agreement, including the tariff at Exhibit 1 thereto (“Settlement Agreement” or “Settlement”), addresses terms and conditions for an auditing and incentive program relating to competitive local exchange carrier (“CLEC”) collocation power usage, which are at issue in the above-captioned cases.¹

The Settlement Agreement resolves in a mutually beneficial manner all of the issues raised in the above-captioned matters and includes all of the parties to these cases. As described below, this Settlement Agreement is in the public interest. The Joint Petitioners, therefore, request that the Department approve without modification the rates, terms and conditions agreed to by the Joint

1 The Settlement Agreement is attached hereto as Exhibit A. Exhibit 1 to the Settlement Agreement sets forth the Massachusetts tariff language agreed to by the Joint Petitioners.

Petitioners set forth in Exhibit 1 to the Settlement Agreement attached hereto. In support of their request, the Joint Petitioners state as follows:

I. SUMMARY OF SETTLEMENT

1. The Joint Petitioners are parties to the above-captioned cases. The Joint Petitioners have agreed to the terms and conditions set forth in this document and the attached Settlement Agreement as a means to resolve, finally and equitably, all issues arising from the disputed amendments proposed by Verizon to its collocation tariff, M.D.T.E. No. 17, as described in the pleadings and testimony submitted in the above-captioned proceeding, in lieu of further protracted and expensive litigation before the Department and in the courts. The Settlement Agreement reflects compromises by the Joint Petitioners in the interests of forging a consensus resolution of all disputes.

2. The Joint Petitioners propose that the Department adopt the terms and conditions described in the Settlement Agreement and incorporated in the tariff language attached as Exhibit 1 thereto. Verizon will file the amended tariff pages attached as Exhibit 1 to the Settlement Agreement after the Department issues its ruling, such tariff pages to be effective upon thirty-(30) day's notice.

3. The terms and conditions agreed to by the parties fairly and reasonably balance the interests of different segments of the telecommunications industry and the public.

II. HISTORY OF PROCEEDING

4. On January 12, 2001, Verizon filed tariff revisions relating to the charges for DC power provided to collocation arrangements under Verizon's M.D.T.E. Tariff 17. The revisions changed the application of the power charges from a per fused-amp basis, as then required under the Department-approved M.D.T.E. Tariff 17, to a per load-amp basis. Also included in those revisions were provisions for audits of power usage and enforcement terms. The tariff revisions became effective on February 11, 2001.

5. On April 6, 2001, Verizon filed with the Department revisions to its tariff M.D.T.E. No. 17 (See Revisions, Part E, Section 2.2) relating to DC power provided to collocation arrangements, including DC Power audits, inspections, enforcement and penalties. AT&T, Covad, Allegiance, Sprint, Conversent and WorldCom filed comments on these revisions. Verizon filed its reply on April 18, 2001.

6. By Memorandum dated May 2, 2001 from Hearing Officer Tina Chin, the Department permitted the April 6, 2001 revisions to Tariff No. 17 to take effect as of May 6, 2001, pending further investigation of the filing in D.T.E. 98-57 (Phase IV), and subject to true-up. The Department also requested that parties comment on the need for discovery, pre-filed testimony, and evidentiary hearings, and to propose procedural schedules for Phase IV. AT&T, Sprint, Covad, Allegiance and Verizon filed comments.

7. By Memorandum dated May 25, 2001 from Hearing Officer Tina Chin, the Department clarified that the scope of issues in Phase IV of D.T.E. 98-57 is limited to collocation power issues raised by Verizon's April 6th filing, and to access to IOF transport from a mid-span meet, and pre-filed testimony should address those issues pursuant to the Procedural Schedule issued May 25, 2001.

8. On July 10, 2001, Verizon and AT&T filed with the Department a joint Motion Pursuant to the Motion for Entry of Order According to the Terms as Stipulated by the Parties ("Motion"), requesting the Department to approve language for Tariff No. 17 that relates to access to interoffice transport facilities from mid-span meet arrangements. On July 11, 2001, the Hearing Officer notified all parties to D.T.E. 98-57 (Phase IV) that Department approval of the Motion would remove the issue of access to interoffice transport facilities from a mid-span meet arrangement from further consideration in this proceeding. On July 20, 2001, the Department granted the Motion and approved the illustrative tariff.

9. On October 5, 2001, Verizon requested a continuance of the evidentiary hearing, originally scheduled for October 10, 2001, to allow more time for settlement discussions.

10. On October 5, 2001, Hearing Officer Jesse Reyes granted Verizon's request for a continuance.

11. By letter dated November 2, 2001, Sprint requested the Department to extend the procedural schedule for all parties by sixty (60) days to allow more time for settlement discussions.

12. On November 5, 2001, the Department granted Sprint's request to extend the procedural schedule. Hearings are scheduled for January 9, 2001.

III. TERMS AND CONDITIONS

13. Joint Petitioners have agreed to modify Verizon's tariff language relative to auditing, penalties/incentives and notification processes.

14. With regard to tariff provisions governing the audit program, Joint Petitioners have agreed that Verizon may conduct random inspections of CLEC power use to determine whether CLECs are using more power than their stated load for which they are being billed. However, such audits shall be conducted in accordance with the following requirements:

a. For the results of any test that exceed the ordered load, Verizon will send the CLEC a certified statement including: (1) initials or identifying number of the Verizon technician(s) who performed the test; (2) the date of the test; (3) the time of the test; (4) the make, model and type of test equipment used; (5) the length of monitoring and the results of the specific audit; (6) the total load amps currently being billed; (7) how the test was done; and (8) any other relevant information or documents. Verizon will maintain a file of results taken of any test for two (2) years and such file will be made available to the CLEC that was audited. Verizon will keep confidential the identity of CLECs that it audits as well as the results of such audits, unless it receives prior written consent of the affected CLEC to disclose such information. The foregoing

statement does not preclude Verizon from providing the required notice to the Department.

b. If the first inspection reveals that the power being drawn is greater than the applicable buffer zone (110% or 120% of total load amps ordered, as discussed below), then Verizon will take a second measurement no sooner than one hour and no later than two days after the initial reading. Verizon will give the CLEC telephonic or e-mail notice (to CLEC designee named in advance) that Verizon will be doing a second test.

c. Verizon will not wait for the CLEC or require it to be present during the second Verizon test. Nothing in the agreement shall be construed to prohibit the CLEC from testing at its own cage. The CLEC will not wait for Verizon or require it to be present during the CLEC test. At the CLEC's request, Verizon will send a representative to accompany the CLEC to conduct a joint test at the CLEC cage at no charge to the CLEC. The CLEC will send its own audit measurements to Verizon if they are taken in response to Verizon's notification of violation and if the CLEC's measurements contradict Verizon's audit measurements.

d. Verizon will give the CLEC notice within ten (10) business days of the results of the second test, with the detail described above in paragraph 14.a.

e. If the CLEC disagrees with the results of the audit, it will so inform Verizon, and then the parties will make a good faith effort to resolve the issue.

f. If the parties do not resolve the issue, either party can request the Department's assistance in resolving the dispute.

g. With regard to tariff provisions governing the penalty incentive program, Joint Petitioners have agreed to procedures where the CLECs must pay Verizon for the audited load if they are found to be exceeding their stated load. Moreover, under certain circumstances, the CLECs would also be required to pay an additional penalty to a fund/organization designated by the Department, such as the Universal Telephone Assistance Plan ("UTAP"), as addressed below in this Petition. In particular,

1. Joint Petitioners have agreed to enlarge the "buffer zone" (where the CLEC pays Verizon based on the audited load but pays no additional penalty) from 110% to 120% of the stated load, for the first two violations within a consecutive 12 month period for collocation arrangements having a total of 100 amps or less fused, so long as the second violation is not for the same collocation arrangement as the first. For any subsequent violations or if the second violation is for the same collocation arrangement, and for any violations where the arrangement has more than 100 amps fused, the buffer zone is 110% of load.
2. Joint Petitioners have agreed that in the case of a violation within the buffer zone, the CLEC will have 10 business days from receipt of notice of the violation to reduce the power being drawn and/or to revise its power requirement.

3. Joint Petitioners have agreed that the language of Part E, Section 2.3.5.E of tariff M.D.T.E. No. 17 would be modified to state that if the audit reveals that the power being drawn is greater than the applicable buffer zone (110% or 120% of load, as applicable) then the “penalty” would be as follows:
 - a. For the first such violation within the same consecutive 12 month period, the CLEC would be billed by Verizon for the "audited" load amount for 4 months. The CLEC would pay a separate and additional penalty to a fund designated by the Department, measured as the difference between the billing at the fused capacity and the billing at the audited load for 4 months. The CLEC will send notice of the payment to the fund to Verizon.
 - b. For the second such violation within the same consecutive 12-month period, the CLEC would be billed by Verizon for the "audited" load amount for 5 months. The CLEC would pay a separate and additional penalty to a fund designated by the Department, measured as the difference between the billing at the fused capacity and the billing at the audited load for 5 months. The CLEC will send notice of the payment to the fund to Verizon.
 - c. For the third such violation within the same consecutive 12-month period the CLEC would be billed by Verizon for the "audited" load amount for 6 months. The CLEC would pay a separate and additional penalty to a fund designated by the Department, measured as the difference between the billing at the fused capacity and the billing at the audited load for 6 months. The CLEC will send notice of the payment to the fund to Verizon.
 - d. For additional violations over 3 in the same consecutive 12 month period, Verizon would bill at the fused amount for a minimum of 6

months and continue to bill at the fused amount until an updated attestation or augment specifying revised power is received. In this circumstance, no amounts would be paid to the fund designated by the Department.

4. At the conclusion of any Department proceeding in which Verizon receives a favorable ruling regarding disputes of audit results and/or processes and penalty amounts related thereto, the above penalties (including the revised billing) will be self-executing. Verizon will notify the Department of the violation, but no Department action or approval is needed to begin the revised billing and for the separate and additional penalty to be paid.
5. Verizon will send the CLEC a notice that it is being billed under a penalty situation, designating the applicable number of months and also calculating the penalty owed to the Department under the above described scale. A copy will be sent to the Department under seal with a specific reference to this docketed proceeding.
6. If the CLEC has requested a power augment under which the audited amount would be within the augmented load plus the applicable buffer zone, and the augment is late due to Verizon's fault, the penalty will not be imposed and the parties will not count this instance for purposes of determining what type of penalty to impose.

Nothing herein shall be construed to prevent the parties from contesting any misinterpretation of this Settlement (including tariff provisions) and its application to other states.

15. This Settlement and the processes proposed herein were designed to be self-executing. While Department jurisdiction is maintained, Department involvement is limited to resolution of disputes involving audit results and/or

processes and penalty amounts related thereto. Joint Petitioners have designed processes in this manner so that the payment of penalties/incentives are provided to Verizon or to a fund to be designated by the Department.

16. As to identity of a fund to be designated by the Department, Joint Petitioners suggest the Universal Telephone Assistance Plan (“UTAP”) (or its current name equivalent). Joint Petitioners suggest that the Department, through a Department Secretarial Letter, provide notice and opportunity for UTAP to accept the funds associated with this Settlement.

IV. EFFECTIVE DATE OF SETTLEMENT PROVISIONS; OTHER PROVISIONS

17. The Settlement proposed herein will go into effect upon the Department’s issuance of a final order approving, without modification, the Joint Petition, Settlement Agreement and the revised portions of tariff DTE MA No. 17.

18. The Joint Petitioners may enforce the Settlement Agreement and tariff through any appropriate actions before the Department or in federal or state court, or through any other available remedy. The Joint Petitioners retain all of their rights to appeal any final Department order related to the enforcement or interpretation of this Settlement. This shall be in addition to any other available remedy at law or equity.

19. This Settlement is expressly conditioned upon the Department’s approval, without modification, of all of the specific terms and conditions contained in this Joint Petition, the Settlement Agreement and tariff. If the

Department should fail to grant such approval, or should modify adversely any material term or condition within the Joint Petition, the Settlement Agreement and tariff, any party may elect to withdraw, in whole or in part, from this Agreement, upon written notice to the Department and the Joint Petitioners within 20 calendar days of issuance of an adverse final Department order. In that event, the Joint Petitioners shall have all legal rights that they may have waived by entering into this Settlement, including the right to seek approval of their original proposed terms and conditions. The Joint Petitioners have agreed to support this Settlement and to make their best efforts to secure its approval by the Department.

V. PUBLIC INTEREST CONSIDERATIONS

20. This Settlement is in the public interest and should be approved in full.

21. The Settlement achieves a just and fair compromise by all parties, who represent a variety of interests, of the important and contentious issues raised in the proceeding.

22. The Settlement contains a series of procedures and puts a process in place to provide an incentive program to dissuade CLECs from exceeding their stated power loads, and to resolve disputes in the event Verizon's audit program finds a CLEC using more power than the load for which it is being billed.

23. It is in the public interest to have an audit and incentive program in place to dissuade CLECs from using more than the stated load of power that Verizon is expecting them to use because when CLECs exceed their power load,

especially when more than one CLEC in a given central office does so, it may result in insufficient power capacity being available to support future collocation arrangements or to meet Verizon customer needs, and could possibly even result in service outages. It is also in the public interest to have fair processes in place, including reasonable auditing procedures and penalty requirements, adequate notice of infractions and opportunities to correct and the ability to seek resolution in the event that disputes arise. This Settlement strikes an appropriate balance between the needs of Verizon and CLECs concerning power load requirements. Joint Petitioners also submit that the Settlement will minimize party and Department resources spent litigating these issues in the future.

24. Finally, approval of the Joint Petition, the Settlement Agreement and proposed tariff will avoid the substantial time, expense and uncertainty involved in litigation of issues in these cases. By avoiding the necessity of further administrative proceedings and litigation, including possible appeals, the resources of the parties and the Department will be appropriately conserved.

VI. CONCLUSION

Wherefore, the Joint Petitioners, intending to be legally bound, respectfully request that the Department: (1) approve without modification the proposed Settlement Agreement set forth in Exhibit A; and (2) approve without modification the terms and conditions set forth in the proposed tariff language appended as Exhibit 1 to the Settlement Agreement.

Respectfully submitted,

Bruce P. Beausejour
Barbara Anne Sousa
Keefe B. Clemons
Verizon
185 Franklin Street, Room 1403
Boston, MA 02110-1585
Attorneys for Verizon
(617) 743-6744
(617) 737-0648 (FAX)

Attorneys for Verizon

Antony Richard Petrilla
600 14th Street, NW, Suite 700
Washington, DC 20005
(202) 220-0400

Attorney for Covad
Communications Company

Craig Dingwall
Sprint Communications Company L.P.
401 9th Street, NW, Suite 400
Washington, DC 20004
(202) 585-1936
(202) 585-1894 (FAX)

Attorney for Sprint
Communications Company L.P.

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